IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17990 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAYKUMAR MUNNABHAI TIWARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17990 of 2003

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR LR PUJARI Ld. AGP for Respondent No.1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 19/02/2004

ORAL JUDGEMENT

1. Mr.L.R.Pujari, learned AGP has placed on record

the affidavit in reply on behalf of respondent no.2. Same is kept on record.

2. Heard Mr.A.K.Pandya for Ms.K.U.Mishra, learned advocate for the petitioner and Mr.L.R.Pujari, learned AGP for the respondents.

3. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 25.7.2003 (Annexure-A) passed by respondent no.2 under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and quashing and setting of the said order.

4. The grounds of detention dated 25.7.2003 (Annexure-B) suggest that two cases under the provisions of the Bombay Prohibition Act have been registered against the petitioner. It is alleged in the grounds of detention that the petitioner has been possessing deadly weapons and has been dealing in the transportation / sale of liquor injurious to the heath of public and that the petitioner with his associates has been dealing in the bootlegging activities. In the grounds of detention, two unregistered cases relating to the incident of 18.6.2003 and 3.7.2003 have also been relied upon. The identity of the witnesses of the unregistered cases have been withheld invoking the provisions contained in Section 9(2) of the PASA Act.

It is submitted by Mr.Pandya that requirements of Section 9(2) of the PASA Act have not been complied with inasmuch as the Detaining Authority has not reached subjective satisfaction for invoking Section 9(2) of the PASA Act. It is stated that there is no verification of the veracity of the incident as well as the antecedent of the witnesses and that there is no contemporaneous material on the basis of which the identity could be withheld under Section 9(2) of the PASA Act.

5. As far as withholding the identity of the witnesses invoking Section 9(2) of the PASA Act is concerned, in the grounds of detention, it has been stated that the statements of the witnesses have been verified by calling the witnesses personally and that it appeared to the detaining authority that the averments made in the statement appeared true and their apprehension is also found correct and therefore, the identity of the witnesses have been withheld invoking Section 9(2) of the PASA Act.

6. In the case of Kishor Naginbhai Parmar Vs. State of Gujarat & Others, 2000 (4) GLR 3236 in Para.13 relying on the decision in the case of Relia Dhanjibhai Khimjibhai Koli Vs. Rajkumar in Special Civil Application No.9053 of 1998, the learned Single Judge observed that in the instant case also, there appears no material to land support to the assertion of the witnesses and the subjective satisfaction of the detaining authority.

7. In the decision rendered in Special Civil Application No.9053 of 1998, this Court observed that, "there is no material whatsoever to support the assertion whether the allegations made by the concerned witnesses were genuine or not. It appears that the police and the detaining authority both have relied upon the statements of the witnesses without verifying the correctness of the same".

In Para.14, it has been observed by the learned Single Judge that, "mere statement about having verified the veracity, genuineness and correctness of the fear expressed by the witnesses, under such circumstances, can be of no virtue, in absence of contemporaneous material. The detention therefore stands vitiated for want of proper exercise of powers under Section 9(2) of the PASA Act".

8. In the instant case, the witnesses in their statements before the detaining authority reiterated the same thing which they have stated before the police in the grounds of detention as pointed out earlier. All what has been stated is that the witnesses have been called in person and at the inquiry, the averments made by the witnesses under the statements appeared true and the apprehension also appeared correct and therefore, the provisions of Section 9(2) of the PASA Act have been resorted to have for withholding the identity of the witnesses.

9. It may also be seen that there is no contemporaneous material to show whether the statements made by the witnesses were genuine, true and correct and also there is no material to suggest the verification of the veracity of the incident i.e. the activities allegedly indulged into by the petitioner detenu. Under the circumstances, the detention order cannot be said to be in consonance with the requirements of Section 9(2) of the PASA Act inasmuch as mere statement about the activities allegedly indulged into by the petitioner stated before the police and also before the detaining

authority cannot be said to be sufficient and also as regards the fear expressed by the witnesses and there is no contemporaneous material also to arrive at the subjective satisfaction as contemplated under Section 9(2) of the PASA Act and therefore, the detention order would be liable to be quashed and set aside and the petitioner detenu set at liberty.

10. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 25.7.2003 (Annexure-A) passed by respondent no.2 against the petitioner -detenu Sanjaykumar Munnabhai Tiwari is hereby quashed and set aside. The petitioner detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)